THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12538 OF 2006

ORDER:

The petitioners, who are twelve in number, filed the instant writ petition assailing the order of the first respondent herein, dated 02.02.2006, in appeal No.HYD/146/92. The impugned order was passed under Section 33 of the Urban Land (Ceiling and Regularisation) Act, 1976 (the Act, for brevity), whereby and whereunder the appeal filed by the petitioners herein was dismissed confirming the final orders of the second respondent, namely, the Special Officer and Competent Authority, Urban Agglomeration, Hyderabad.

The petitioners are legal heirs of one K.Narsimha. He filed declaration under Section 6 of the Act. After filing the declaration, he died. The declaration filed by late K.Narsimha was examined and a draft statement under Section 8(1) of the Act was prepared, which was communicated to the petitioners for their objections as required under Section 8(3) of the Act. The petitioners submitted their objections raising mainly four grounds. These are:

i) The house bearing No.1-92 (New No.3-42) situated at Uppal Kalan was constructed in 1965 after obtaining permission of Gram Panchayat and therefore, the same cannot be treated as vacant land;

ii) The house bearing No.4-63 situated at Uppal constructed in 1958 and the same cannot be treated as vacant land;

iii) The land in survey Nos.300 and 301 admeasuring Acs.5.12 guntas of Uppal Bagath is agricultural land earmarked as such in the master plan, and therefore, the same is not vacant land for the purpose of the Act; and

iv) Late K.Narsimha was the head of the Undivided Hindu Joint Family and therefore, his two wives, sons and two sisters are entitled to retain their respective shares in the land.

The Special Officer considered these objections and held that the petitioners are entitled for exclusion of appurtenant land with reference to objections 1 and 2 as above, that the land was not being used for the purpose of agriculture but during the years 1975-1976 and 1985-1986, the lands were being used for growing para grass and that the lands in question are self acquired property of late K.Narsimha, who purchased the lands by himself and they do not belong to joint family. For these reasons, the second respondent determined an extent of 20,958 square meters in survey Nos.300 and 301 of Uppal Bagath as excess vacant land under the provisions of the Act. This order was passed on 19.10.1992, which was the subject matter of appeal before the first respondent. The petitioners raised the same grounds before the first respondent, which were adverted to. The grounds urged and the finding recorded by the first respondent are as under.

) The land in survey Nos.300 and 301 of Ippal Baghat village situated in peripheral rea of H.U.A., and specified for onservation purpose in the Master Plan otifi3ed on 29.09.1980. Conservation ıcludes agriculture, horticulture and ericulture, et. According to judgments of upreme Court, High Court and even ccording to Section 2(o) of the Act, the ınd declared does not covered by the I.L.C. Act. Hence, the impugned order nder appeal is illegal and contrary to law.	(i) A perusal of the Lower Court record would reveal that the lands in Survey Nos.300 and 301 of Uppal Baghat are earmarked for conservation purpose in the Master Plan, which include agriculture purpose also. The entries in the pahanies for the years 1975-76 and 1985-86 show that the lands are being used for para grass cultivation. The raising of grass is not considered as agriculture as per the definition contained in Explanation A to Sec.2(o) of the Act. As such the contention of the Appellants that the lands are agriculture not covered the U.L.C Act, is not acceptable.
i) That deceased declarant did not claim ıe declared property as his self-acquired roperty, but declared as family property, /hich means joint family property. The ₹gal heirs who are major are entitled each 000.00 square meters of ceiling unit.	(ii) The appellants in the memorandum of appeal have stated that the land was purchased by the declarant as kartha of the undivided Hindu Joint Family, out of joint family nucleus. They have not filed any evidence in support of their contention that the property was acquired with the joint family nucleus. As the declarant died on 14.08.1991 i.e., after the commencement of the Act, the Competent Authority rightly treated the property as self-acquired and computed in the holding of the declarant. Hence, the contention of the Appellants (L.Rs., of the deceased declarant) to allow shares in the property, is not tenable.
ii) That the cattle shed being non-dwelling nit is entitled to have 500.00 square ıeters as appurtenant land.	(iii) It is seen from the impugned order that Competent Authority has allowed an extent of 1000.00 square meters towards appurtenant and additional appurtenant land to house bearing No.4-63 at Uppal constructed prior to the Act. He also excluded an area of 79.26 square meters covered by cattle shed and well existing in the premises as non-vacant land. The Appellants have not produced any evidence of existing of cattle shed in the premises prior to commencement of the Act. Therefore, the said non-dwelling unit is not entitled to the appurtenant land as claimed by the Appellants.

Learned counsel for the petitioners, Sri C.V.Rudra Prasad, taking this Court through the orders passed by the original authority as well as the appellate authority, submits that both the orders are erroneous, that the land ought to have been treated as agricultural land, as the petitioners used the land for cultivating para grass and that all the petitioners are entitled for 1,000 square meters each being the shareholders in the joint family of late K.Narsimha.

In support of the contention, the learned counsel has placed reliance on the orders of the Government in G.O.Ms.No.4179, dated 04.09.1976. A reading of the said Government Order would show that initially the Government issued

G.O.Ms.No.128, dated 14.08.1978, giving guidelines for exemption of agricultural lands under Section 20(1)(a) of the Act. It was noticed that those guidelines did not cover agricultural land used for cultivation of grass such as Nepier Grass, Para Grass and included as such in the master plan. Subsequently, it appears Government of India issued guidelines vide their letters No.3/30/79-000, dated 30.05.1980 and 03.06.1989, advising the State Government to consider the request of the persons cultivating special kinds of grass for exemption under Section 20(1)(a) of the Act, if the lands are entered in the land records before appointing it as being used mainly for agriculture subject to, *inter alia,* conditions that the land should actually be used for creating special kinds of grass and that whenever the land is used for other purposes prior intimation should be given to the Government and competent authority. The Special Officer rejected the objection of the petitioners on the ground that except for the years 1975-1976 and 1985-1986, there is no proof that the petitioners cultivated para grass and that the benefit under Explanation (A) to Section 2(o) of the Act cannot be given. The same was confirmed by the first respondent. Be that as it is, a careful perusal of the G.O., referred to hereinabove would show that granting exemption to such land and the same is not intended to empower either the original authority or appellate authority to exclude such land from the computation of ceiling area. Therefore, this Court does not find any infirmity in the order impugned herein. The learned counsel does not seriously press the finding insofar as the appurtenant land of two houses in Uppal. K.Narsimha died on 14.08.1991 after commencement of the Act, and therefore, the property has to be treated as self acquired property continued to be in holding of the declarant. Before the appellate authority, the petitioners did not produce any evidence in support of their contention that the declarant was karta of undivided Hindu family.

Learned counsel for the petitioners placed reliance on the decision rendered by this Court in **Sri Bhavanarishi Co-operative House Building Society v Joint Collector, Ranga Reddy District**[1]. As the same has been reversed by the Division Bench subsequently, this Court is not inclined to refer to the same, especially on the point raised by the learned counsel for the petitioners that even if the land is kept fallow or not cultivated, the same does not seize to be agricultural land. The learned counsel also placed reliance on the decision of the Supreme Court in **State of A.P., v N.Audikesava Reddy**[2] and the same is not relevant to the questions raised by the petitioners.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

23.06.2006
pln

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[1] 2002 (5) ALD 398

[2] (2002) 1 SCC 227